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SUBJECT: PROGRESS ON U.S. COUNTER-PIRACY AGENDA AT
INTERNATIONAL PIRACY CONFERENCE

11. (SBU) SUMMARY. The UN/Kenya International Conference on Piracy around Somalia was held in Nairobi, Kenya on December 10-11, 2008. The U.S. delegation was led by Assistant Secretary of State for Political-Military Affairs Mark Kimmitt, and included representatives from AF, L, Embassy Nairobi's Somalia Unit, and DOD/OSD. The two prevalent themes in statements during the ministerial were the need to address the land roots of piracy by stabilizing Somalia and the need for greater international coordination in fighting piracy. The U.S. delegation used the conference to build support for the December 16th Ministerial meeting at the Security Council, and the formation of an international Contact Group on Somali Piracy. At the end of the conference, Kenyan government representatives offered to enter into an agreement with the United States concerning the transfer and prosecution of pirates. END SUMMARY.

12. (SBU) KENYANS OFFER TO TAKE AND PROSECUTE PERSONS UNDER CONTROL (PUCs). During the conference, the UK announced it had concluded a Memorandum of Understanding (MOU) with Kenya that would facilitate the transfer and prosecution of piracy suspects detained by the UK Royal Navy off the coast of Somalia. In a pull-aside conversation at the end of the conference, Kenyan Foreign Minister Wetangula told A/S Kimmitt that Kenya was prepared to agree to a similar MOU with the U.S. immediately. Noting U.S. interest in the proposal, Kenyan Acting Ambassador for International Organizations Anthony Andanje confirmed this offer.

13. (SBU) CONFERENCE DAY ONE - TECHNICAL EXPERTS RECOMMEND USE OF SHIPRIDER ARRANGEMENTS. On day one, technical experts broke into working groups to discuss proposals in four categories: (1) Legal Implications/Framework, (2) Enforcement Actions, (3) Capacity Building and (4) Commercial/Financial Implications.

-- Legal Implications/Framework. There was extended discussion on technical legal issues, primarily relating to the applicability of various treaties and instruments to acts of piracy. Many of the experts (including those from Egypt, Yemen and China) expressed the view that the UN Convention on the Law of the Sea (UNCLOS) was the sole legal instrument

applicable to acts of piracy. In their view, other instruments, such as the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), had no application. Other experts, as well as the panel chair, expressed the contrary view that while UNCLOS was the primary legal regime, SUA and other international instruments could be applied in certain circumstances.

-- Enforcement Actions. Proposals focused on supporting the establishment of an effective Somali police force and coast guard, encouraging the International Maritime Organization (IMO)-sponsored Djibouti regional meeting on piracy, supporting efforts to establish regional information centers in Kenya and Yemen, and supporting the development of ship-riders agreements with regional states.

-- Capacity Building. The proposals reflected the instruction of the UN Political Office for Somalia (UNPOS) to focus on measures for building capacities within Somalia to address the conditions that create an enabling environment for piracy. Proposals included training coastal security forces, building port infrastructure, and establishing a task force of regional stakeholders to address Somali maritime resource management issues at the local community level.

-- Commercial. Proposals addressed securing Somali territorial waters for fishing, facilitating investment in Somali coastal areas, and studying the possibility of a common policy concerning ransom payments. The U.S. intervened with regard to the first and third proposals, arguing that securing fishing waters was not an appropriate recommendation for a piracy workshop and that the ransom policy language (as originally drafted) was too dismissive of the problem.

14. (SBU) KENYAN PROSECUTORIAL INFRASTRUCTURE. Kenyan legal infrastructure appears to be sufficient for prosecution of piracy suspects. Lack of training appears not to be the primary issue. Rather, the Department of Public Prosecution (DPP) needs additional resources to address logistical issues relating to large investigations and trial (such as transporting witnesses and evidence).

15. (SBU) CONFERENCE DAY TWO - MINISTERS FOCUS ON COOPERATION AND NEED TO ADDRESS LAND ROOTS OF PIRACY BY STABILIZING SOMALIA. The two dominant themes of the ministerial were enhancing international coordination and addressing the land roots of piracy by stabilizing Somalia.

-- Special Representative of the Secretary General of the United Nations to Somalia (SRSG) Ambassador Ahmedou Ould-Abdallah cautioned the ministers against focusing too much on overall problems in Somalia rather than the immediate problem of piracy.

-- France, the UK, Germany, and Russia expressed strong support for the U.S.-proposed Contact Group on Somali Piracy, while China, India, Turkey, and Egypt explicitly called for the UN to coordinate international counter piracy efforts.

-- The Kenyan delegation made strong statements urging the international community to do more to combat piracy and indicated the GOK was strongly committed to sharing the burden. The Kenyan Foreign Minister expressly pledged "to prosecute those that come our way." Kenya noted the complications of prosecuting piracy cases (e.g. witnesses from many nations, many states' interests involved) and the need for cooperation and assistance in this regard. Kenya suggested joint/coordinated naval patrols of Somali coastal waters to halt pirate ships coming from Somalia, and offered the use of Kenyan ports for this effort. The Kenyan Foreign Minister also announced Kenya's intention to sanction Somali leaders who were found to be threatening the peace process.

-- Tanzania expressed its strong intent to cooperate in the fight against piracy and a willingness to enter into ship-rider agreements in order to facilitate prosecution of captured pirates.

-- Thailand noted the need for better coordination and information-sharing was illustrated by the recent sinking of an alleged pirate mother ship by the Indian Navy, an incident which resulted in the death of several Thai crewmembers.

-- The Republic of Korea highlighted the need for countries to adopt national legislation that criminalizes piracy and noted the G7 is considering the contribution of naval assets to the counter piracy effort.

-- Egypt proposed the creation of a special international piracy court in the region. On the margins of the conference Egypt requested U.S. support for the proposal; the U.S. delegation stressed the current U.S. focus on near-term PUC solutions (disposition agreements with states in the region), but indicated the U.S. could be supportive of assessing the feasibility of a special court for piracy as a longer-term solution.

-- The UN Office on Drugs and Crime (UNODC) noted that it is actively engaged in a proposal to provide legal training and assistance to countries in the region.

-- The African Union called for additional support to the African Union Mission in Somalia (AMISOM) and development of an AMISOM maritime program. On the margins of the conference, AU representatives met with maritime representatives from key regional states (Kenya, Djibouti, and Tanzania), the EU maritime task force, and the IMO to build support for AU maritime role.

16. (SBU) U.S. CALLS FOR GREATER INTERNATIONAL COORDINATION, EMPHASIZES RESPONSIBILITIES OF SHIPPING INDUSTRY, AND HIGHLIGHTS SUPPORT FOR AMISOM. The U.S. statement noted substantial U.S. contributions to the international effort to fight piracy off Somalia, called for greater international cooperation and coordination in counter-piracy efforts, emphasized the need for industry to take appropriate self-protective measures, and highlighted U.S. support for broader efforts to achieve peace and stability in Somalia, including support for AMISOM. The U.S. also noted that while the ultimate solution to piracy lies in achieving peace and stability in Somalia, the Somali people and the international community cannot wait for the stabilization and recovery of Somalia to begin taking more concrete actions to stop piracy.

17. (SBU) RUSSIA EXPRESSES SUPPORT FOR CONTACT GROUP. Head of Russian Delegation Vasiliy Titushkin expressed Russia's strong support for the U.S.-led Contact Group on Somali Piracy. In a pull-aside, he expressed support for the U.S. "approach" to the fight against piracy. He noted that Russia would meet with the EU the following week to discuss possible Russian participation in Operation Atalanta. Titushkin also noted that land-based piracy operations in Somalia might require specific legal authority from the Security Council.

18. (SBU) EGYPT EXPRESSES STRONG RESERVATIONS ABOUT INTERNATIONAL MARITIME ORGANIZATION SUBREGIONAL AGREEMENT. The Egyptian and IMO delegations pulled AF and L representatives aside to discuss concerns about the draft IMO subregional MOU on combating piracy and armed robbery at sea. IMO will hold informal consultations with a subset of regional States in early January to seek wider grounds for agreement prior to a January 26-29 meeting in Djibouti to finalize the MOU.

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